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EXAMINER

CHEN, CATHERYNE

ART UNIT

PAPER NUMBER

1655

NOTIFICATION DATE

DELIVERY MODE

09/24/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

PATENTS@BELLBOYD.COM



### **DETAILED ACTION**

1. Claims 1-26 are currently pending. Please take notice of the election to species requirement in paragraph 3. To be fully responsive, applicant must fulfill this requirement.

### ***Election/Restrictions***

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claim(s) 1-8, 19-20, drawn to a composition for oral administration.

Group II, claim(s) 9-18, 21-26, drawn to a method of improving skin disorder.

The inventions listed as Groups I-II do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The composition of Group I, specifically flavanone and vitamin C, is involved in immune function (see first full paragraph of <http://web.archive.org/web/20010719165229/http://www.nbizz.com/longevityclinic/listings/23.html>). The Group I claims are not involved in preventing skin, hair, or coat disorders; therefore, the reference shows that the claimed composition has a different use than the uses claimed in groups I-II. Thus, the reference shows a lack of unity.

This application contains claims directed to more than one species of the generic invention. These species are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1.

The species are as follows:

Applicant must elect a specific flavanone from Claims 2, 3, 10, 18, 24.

Applicant must elect a specific active ingredient from Claims 6, 21.

Applicant must elect a specific composition form for Claim 7.

Applicant must elect either a human or pet animal for Claim 9.

Applicant must elect a specific cause for the disorder in Claim 14.

Applicant must elect a specific characteristic for Claims 15, 16.

Applicant must elect skin, hair or coat for Claims 17, 23.

Applicant must elect either Claim 19 or Claim 20.

Applicant must elect a specific citrus fruit from Claim 20.

**Applicant needs to enumerate all of the elected components in the composition.**

Applicant is required, in reply to this action, to elect a single species to which the claims shall be restricted if no generic claim is finally held to be allowable. The reply must also identify the claims readable on the elected species, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include

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all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

The claims are deemed to correspond to the species listed above in the following manner:

Claims 10-16 depends on Claim 9.

Claims 18, 21, 22, 25 depend on Claim 17.

Claim 22 depends on Claim 23.

Claim 26 depends on Claim 21.

The following claim(s) are generic: 1, 8, 9, 17, 23.

The species listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the species lack the same or corresponding special technical features for the following reasons:

The flavanone compounds of Claims 2, 3, 10, 18, 24 have distinct chemical structures. Thus, there is a lack of unity.

The active compounds of Claims 6, 21 are chemicals from different sources and they have distinct chemical structures. Thus, there is a lack of unity.

The composition form for Claim 7 is distinct food products from different sources for different uses. Thus, there is a lack of unity.

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The human or pet animal is from different species for Claim 9. Thus, there is a lack of unity.

The disorder in Claim 14 are from different origins or causes. Thus, there is a lack of unity.

The specific characteristic for Claims 15, 16 are distinct and different in severity. Thus, there is a lack of unity.

The skin, hair or coat for Claims 17, 23 are structurally distinct and on different species. Thus, there is a lack of unity.

The source of flavanone is either synthetic or natural in Claim 19 and Claim 20. Thus, there is a lack of unity.

The citrus fruit from Claim 20 are from different plants and species. Thus, there is a lack of unity.

Applicant is advised that the reply to this requirement to be complete must include (i) an election of a species or invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To preserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out supposed errors in the restriction requirement, the election shall be treated as an election without traverse.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one

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or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

The examiner has required restriction between product and process claims. Where applicant elects claims directed to the product, and the product claims are subsequently found allowable, withdrawn process claims that depend from or otherwise require all the limitations of the allowable product claim will be considered for rejoinder. All claims directed to a nonelected process invention must require all the limitations of an allowable product claim for that process invention to be rejoined.

In the event of rejoinder, the requirement for restriction between the product claims and the rejoined process claims will be withdrawn, and the rejoined process claims will be fully examined for patentability in accordance with 37 CFR 1.104. Thus, to be allowable, the rejoined claims must meet all criteria for patentability including the requirements of 35 U.S.C. 101, 102, 103 and 112. Until all claims to the elected product are found allowable, an otherwise proper restriction requirement between product claims and process claims may be maintained. Withdrawn process claims that are not commensurate in scope with an allowable product claim will not be rejoined. See MPEP § 821.04(b). Additionally, in order to retain the right to rejoinder in accordance with the above policy, applicant is advised that the process claims should be amended during prosecution to require the limitations of the product claims. **Failure to do so may result in a loss of the right to rejoinder.** Further, note that the prohibition against double

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patenting rejections of 35 U.S.C. 121 does not apply where the restriction requirement is withdrawn by the examiner before the patent issues. See MPEP § 804.01.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to CATHERYNE CHEN whose telephone number is (571)272-9947. The examiner can normally be reached on Monday to Friday, 9-5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terry McKelvey can be reached on 571-272-0775. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Catheryne Chen  
Examiner Art Unit 1655

/Michael V. Meller/



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Primary Examiner, Art Unit 1655